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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

SCHULTE PROPERTIES LLC

Debtor,

Case No. BK-S-18-12734-MKN
Chapter 11

**OPPOSITION TO MOTION FOR
RELIEF FROM THE AUTOMATIC
STAY AND IN REM RELIEF**

Hearing Date: July 25, 2018
Hearing Time: 9:30 a.m.

SCHULTE PROPERTIES LLC (“Debtor”), by and through its counsel, MATTHEW L. JOHNSON, ESQ. of JOHNSON & GUBLER, P.C., hereby opposes the Motion For Relief From Automatic Stay and In Rem Relief (the “Motion”) filed by WELLS FARGO BANK, N.A. (“Wells Fargo”) as follows:

I. FACTS

1. On October 11, 2009, William R. Schulte and Melani Schulte filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code, Case No. 09-29123-MKN (the “2009 Bankruptcy”).
See Exhibit 1, Docket Report, Case No. 09-29123-MKN, pages 1-3.
2. At the time of the 2009 Bankruptcy, William R. Schulte and Melani Schulte earned their livelihood through the management of residential rental properties. Many of the rental

1 properties were held by entities which were ultimately joint administrative debtors with
2 William R. Schulte and Melani Schulte in the 2009 Bankruptcy. *See Exhibit 1. See also*
3 *Declaration of Melani Schulte filed concurrently herewith.*

- 4 3. On September 30, 2010, Judge Markell entered an order authorizing the transfer of the property
5 located at 1528 Splinter Rock Way, North Las Vegas, Nevada (“Splinter Rock”) then held by
6 the single asset limited liability company “1528 Splinter Rock, LLC” to William R. Schulte and
7 Melani Schulte, for judicial expediency purposes. *See Exhibit 2, Order Under 11 U.S.C. §§*
8 *105, 363, and 365 Approving the Transfer of Real Property To, and the Assumption and*
9 *Assignment of Executory Contracts and Unexpired Leases By, Melani Schulte and William R.*
10 *Schulte, 2009 Bankruptcy Doc 749.*
- 11 4. On November 1, 2010, a Grant, Bargain, Sale Deed was recorded transferring Splinter Rock to
12 William R. Schulte and Melani Schulte, in accordance with the Court’s September 30, 2010
13 order. *See Exhibit 3, Grant, Bargain, Sale Deed dated November 1, 2010.*
- 14 5. On March 8, 2011, an Order Confirming Chapter 11 Plan of Reorganization (the “Confirmation
15 Order”) confirming the Third Amended Joint Plan of Reorganization of Melani Schulte and
16 William R. Schulte (the “Confirmed Plan”) was entered in the 2009 bankruptcy as docket no.
17 912. *See Exhibit 4, Order Confirming the Debtors’ Chapter 11 Plan of Reorganization.*
- 18 6. The Confirmation Order states, “The secured portions of the claims of the Debtors’ lenders (the
19 “Lenders”) are reduced to either the appraised value of the underlying properties (the
20 “Properties”), pursuant to 11 U.S.C. §506(a) or as agreed upon between the parties, as set forth
21 in this Order and the Plan.” *See Exhibit 4.*
- 22 7. The Confirmed Plan ordered Wells Fargo’s secured claims against the Splinter Rock property
23 to be in the amount of \$105,942.62 (the “Approved Wells Fargo Claim”) and Wells Fargo’s
24 unsecured claims against the debtors in the amount of \$0.00. *See Exhibit 4, P.20 L.22.*

- 1 8. The Confirmed Plan ordered the Approved Wells Fargo Claim to be treated “amortized at 5%
2 over 30 years”. *See Exhibit 4, P. 51.*
- 3 9. The Approved Wells Fargo Claim of **\$105,942.62** amortized at **5%** (the “Approved Interest
4 Rate”) over 30 years yielded a monthly payment due to Wells Fargo of **\$568.72** (the “Approved
5 Monthly Payment”). *See Exhibit 5, Amortization Schedule.*
- 6 10. On February 10, 2012, Melani Schulte filed for divorce from William R. Schulte, Case No. D-
7 12-458809-D, in which case all interest in the Splinter Rock property was awarded to Melani
8 Schulte as her sole and separate property. *See Declaration of Melani Schulte.*
- 9 11. On August 21, 2013, a Grant, Bargain, Sale Deed was recorded against the Splinter Rock
10 property as instrument 201308210002055, conveying the Splinter Rock property from William
11 R. Schulte and Melani Schulte as Joint Tenants to Melani Schulte as her sole and separate
12 property. *See Exhibit 6, Grant Bargain, Sale Deed dated August 21, 2013.*
- 13 12. Pursuant to the Confirmed Plan, “ the unsecured portions of the Lenders’ claims are reduced
14 and shall be treated as ‘general unsecured claims,’ pursuant to 11 U.S.C. §506(a)” and any
15 lenders holding secured claims against the Splinter Rock property in excess of the Approved
16 Wells Fargo Claim were deemed to be unsecured. *See Exhibit 4, P.6, L.32.*
- 17 13. On December 15, 2015, Melani Schulte and William R. Schulte received orders of discharge in
18 the 2009 Bankruptcy, which discharge included any unsecured creditors that may have once
19 had a secured claim against the Splinter Rock property in excess of the Approved Wells Fargo
20 Claim. *See Exhibit 1.*
- 21 14. The Confirmed Plan directs that “the Debtors shall transfer title to their properties to a Nevada
22 limited liability company (the “Holding Company”), for liability purposes.” *See Exhibit 4,*
23 *P.57.*
- 24 15. The Confirmation Order directs that “the Debtors are authorized to undertake or cause to be
25 undertaken any and all acts and actions contemplated by the Plan or required to consummate
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1 and implement the provisions of the Plan, prior to, on and after the Effective Date, including
2 without limitation, entering, executing, delivering, filing or recording any agreements,
3 instruments or documents necessary to implement the Plan.” *See Exhibit 4, P. 23 L. 7.*

4 16. On May 30, 2017, Melani Schulte, in conformity with the Confirmation Order and the
5 Confirmed Plan, transferred the Splinter Rock property into its’ Holding Company, Schulte
6 Properties LLC, which is the Debtor in the instant case, by recording a Grant, Bargain, Sale
7 Deed as instrument 20170530-0000547. *See Exhibit 7, Grant Bargain Sale Deed dated May*
8 *30, 2017. See also Declaration of Melani Schulte.*

9 17. Schulte Properties LLC and/or its agent Melani Schulte (collectively hereafter referred to as the
10 “Debtor”) made proper Approved Monthly Payments under the Confirmed Plan to the Splinter
11 Rock Approved Wells Fargo Claim for years. *See Exhibit 8, Evidence of Payments Made. See*
12 *also Declaration of Melani Schulte.*

13 18. Despite numerous requests, Wells Fargo has never yet provided the Debtor with accurate
14 records reflecting the Approved Wells Fargo Claim and the Debtor’s Approved Monthly
15 Payments thereto. *See Exhibit 9, Correspondence with Wells Fargo. See also Declaration of*
16 *Melani Schulte.*

17 19. The Debtor has been trying to obtain accurate records that reflect the Court’s Confirmation
18 Order and proper application of Debtor’s payments from various lenders regarding all 32 of its
19 properties, without success. *See Declaration of Melani Schulte.*

20 20. Facing foreclosure proceedings on several of its properties due to lenders’ inaccurate records,
21 the Debtor filed for Chapter 11 bankruptcy protection on May 31, 2017 as Case No. 17-12883-
22 MKN (the “2017 Bankruptcy”). *See Exhibit 10, Docket Report, Case No. 17-12883-MKN.*

23 21. Believing it could effectively negotiate and obtain proper records from secured lenders (Wells
24 Fargo and others) outside of bankruptcy with reduced administrative costs, the Debtor sought
25 and obtained voluntary dismissal of the 2017 Bankruptcy. *See Declaration of Melani Schulte.*

- 1 22. Following the dismissal of the 2017 Bankruptcy, several properties that had not yet been
2 transferred to the Holding Company were transferred to Schulte Properties LLC as authorized
3 and directed by the Confirmation Order. *See Declaration of Melani Schulte.*
- 4 23. Again facing foreclosure proceedings on several of its properties due to lenders' inaccurate
5 records, and resigned to the necessity of bringing secured lenders to be held accountable before
6 the Court for failure to abide by the Confirmation Order, Debtor again filed for Chapter 11
7 bankruptcy protection on May 10, 2018, which bankruptcy proceeding is the above-captioned
8 Case No. 18-12734. *See Declaration of Melani Schulte.*
- 9 24. Debtor's Scheduled Value of the Splinter Rock property of \$246,775.00 is based upon a
10 Zillow.com "Zestimate" obtained on May 9, 2018, the day before Debtor's bankruptcy filing.
11 *See Exhibit 11, Zillow.com estimate.*
- 12 25. On June 22, 2018, Wells Fargo filed the instant Motion seeking relief from the automatic stay
13 provided the Debtor. Wells Fargo's Motion's coversheet alone contains numerous errors
14 evidencing Wells Fargo's failure to maintain accurate records under the Confirmation Order,
15 such as:
- 16 a. "Amount of Note: \$132,600.00" if accurate would reflect the Approved Wells Fargo
17 Claim of \$105,942.62.
- 18 b. "Interest Rate: 7.500%" if accurate would reflect the Court's Approved Interest Rate of
19 5.0%
- 20 c. "Payment Per Month: \$927.16" if accurate would reflect the Approved Monthly
21 Payment of \$568.72.
- 22 *See Exhibit 12, Coversheet to Wells Fargo's Motion.*
- 23 26. To the best of Debtor's counsel's knowledge and belief, no attempt to resolve this matter was
24 made by Wells Fargo. *See Declaration of Matthew L. Johnson filed concurrently herewith.*
25
26

1 27. The Debtor is preparing a Motion to Assume Lease regarding the Splinter Rock property
2 tenants, who make regular payments to the Debtor. *See Declaration of Melani Schulte.*

3 28. Post-petition, the Debtor has transmitted one payment to Wells Fargo in the Approved Monthly
4 Payment of \$568.72. *See Declaration of Melani Schulte.*

5 29. Although the Debtor is wary of its' lenders' inaccurate record keeping and misapplication of
6 Debtor's payments, the Debtor fully intends to make all regular post-petition monthly payments
7 to its creditors, including making the Approved Monthly Payment of \$568.72 to Wells Fargo in
8 payment of the Splinter Rock Approved Wells Fargo Claim. *See Declaration of Melani*
9 *Schulte.*

10 II. ARGUMENT

11 A. Wells Fargo Has Failed to Comply With LR 4001(a)(2)

12 Wells Fargo was required, pursuant to Local Rule 4001(a)(2), to in good faith attempt
13 resolution of this matter prior to filing any motion for relief from the automatic stay. LR 4001(a)(2)
14 states:

15 Parties in interest are directed to communicate in good faith regarding resolution of the
16 motion before filing a motion for relief from stay including, as appropriate,
17 communication with any trustee appointed in the case. Such attempts to resolve the
18 dispute must be made in a reasonable time frame prior to, but in any case no less than
19 three (3) business days (if debtor is represented by an attorney) or five (5) business
20 days (if debtor(s) are representing themselves), before the motion is filed. **Movant**
21 **must provide evidence of their attempt to resolve the matter with more than**
conclusory declarations, which shall be filed with the motion. The court may
refuse to entertain a motion or opposition if the parties do not comply with this
rule. The court may award, deny, or adjust the fees of an attorney for noncompliance.
Compliance with this subsection is not required for motions for relief from stay
relating to property identified by the debtor as being surrendered in the schedules,
statements, or the proposed plan of reorganization. [Emphasis added.]

22 Debtor's counsel, on information and belief, was not contacted in good faith by Wells Fargo. Had
23 Wells Fargo made contact with Debtor's counsel, the Debtor would have offered to make payments
24 to Wells Fargo for adequate protection in addition to the equity adequate protection Wells Fargo
25 already has, as discussed below. Debtor has already made one Approved Monthly Payment towards
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1 the Approved Wells Fargo Claim since the filing of the petition. Furthermore, Wells Fargo's only
 2 evidence of their alleged "communication in good faith" is a single declaratory sentence on the
 3 Motion's coversheet stating, "Moving counsel hereby certifies that pursuant to the requirements of
 4 LR 4001(a)(2), an attempt has been made to resolve the matter without court action, but movant has
 5 been unable to do so," which statement was electronically signed by Wells Fargo's counsel. No
 6 further correspondence or other evidence of Wells Fargo's "communication in good faith" was
 7 presented as an attachment to the Motion, although clearly required by LR 4001(a)(2): "Movant must
 8 provide evidence of their attempt to resolve the matter with more than conclusory declarations, which
 9 shall be filed with the motion. The court may refuse to entertain a motion or opposition if the parties
 10 do not comply with this rule."

11 Having failed to 1) communicate in good faith, and 2) provide evidence of their attempt to
 12 resolve the matter with more than conclusory declarations, Wells Fargo's Motion should be denied
 13 for failure to abide by Local Rule 4001(a)(2).

14 **B. No Cause Exists to Grant Relief From Stay Pursuant to §362(d)(1) or (d)(2)**

15 Wells Fargo has not demonstrated that any cause exists for relief from the stay pursuant to §362
 16 (d)(1) or (d)(2) because no cause exists. The United States Bankruptcy Code provides pursuant to 11
 17 U.S.C. §362:

18 (d) On request of a party in interest and after notice and a hearing, the court shall grant
 19 relief from the stay provided under subsection (a) of this section, such as by
 terminating, annulling, modifying, or conditioning such stay—

20 (1) for cause, including the lack of adequate protection of an interest in
 property of such party in interest;

21 (2) with respect to a stay of an act against property under subsection (a) of this
 section, if –

22 (A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

23 Here, the Debtor values the Splinter Rock property at approximately \$246,775.00. Wells Fargo has
 24 not disputed the Debtor's estimated value. Further, the Approved Wells Fargo Claim pursuant to the
 25 Confirmed Plan is \$105,942.62. Following confirmation of the 2009 Bankruptcy plan, the Debtor
 26

1 and/or its predecessors made Approved Monthly Payments for a period of time. Due to Wells
2 Fargo's failure to provide the Debtor with accurate accounting, the Debtor cannot be sure what the
3 actual amount owing to Wells Fargo is. However, given that the Approved Wells Fargo Claim is
4 \$105,942.62 (which was paid down by some unknown amount through Debtor's payments), even if
5 you add to that Wells Fargo's claimed "Amount of Contractual Arrearages" of \$47,728.56, which
6 amount Debtor disputes, the sum is only \$153,671.18, which would leave *equity of \$93,103.82* in the
7 Splinter Rock property¹. In actuality, the Debtor must have even more equity than this estimation,
8 due to both Debtor's Approved Monthly Payments made, and Wells Fargo's faulty loan and interest
9 calculations. Thus, while we cannot be sure of the exact figures, it is crystal clear that significant
10 equity in the Splinter Rock property, and therefore adequate protection, exists. Wells Fargo has
11 demonstrated no grounds to seek relief from the automatic stay pursuant to §362(d)(1) or (2).

12 **C. No Cause Exists to Grant Relief From Stay Pursuant to 11 U.S.C. §362(d)(4)(B).**

13 The Debtor sought Chapter 11 Bankruptcy Protection precisely because its lenders, including
14 Wells Fargo, have egregiously failed to abide by Judge Markell's Confirmation Order. Wells Fargo's
15 Motion is a prime example. Although the Approved Wells Fargo Claim is \$105,942.62, the Motion
16 states the note amount is \$132,600.00. Although the Approved Interest Rate is 5.0%, Wells Fargo's
17 Motion states the interest rate is 7.5%. Although the Approved Monthly Payment is \$568.72, Wells
18 Fargo asserts the payment per month is \$927.16. Given these discrepancies, it is easy to understand
19 how Wells Fargo has misapplied Debtor's Approved Monthly Payments over the years and has
20 generated unfounded alleged arrearages. Wells Fargo would have considered Debtor's payments of
21 \$568.72 as insufficient, and therefore charged extra fees and interest rather than properly paying
22 down the Approved Wells Fargo Claim. Debtor and/or Melani Schulte has spent an exhaustive
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24 ¹ In Debtor's 2009 Bankruptcy, Debtor gave a second position trust deed to Bank of Nevada on
25 Splinter Rock and two other properties for a total of approximately \$98,000.00. Regardless, as to
26 Wells Fargo, there is at least \$93,000 in equity, leaving Wells Fargo more than adequately
protected even if no payments were to be made while the case is pending.

1 amount of time and resources attempting to coax Wells Fargo, and various other lenders unrelated to
2 the instant Motion, into complying with the Confirmation Order, to no avail. It is for this reason
3 exactly that the Debtor has sought Chapter 11 bankruptcy protection, and for this reason exactly that
4 the Debtor desperately needs the automatic stay in place.² Wells Fargo must be prevented from
5 foreclosing on Debtor's property based upon its false record keeping in violation of the Court's
6 Confirmation Order in the 2009 Bankruptcy. This Court must hold Wells Fargo accountable for its
7 actions.

8 It should be noted that Wells Fargo makes numerous false or inexplicable statements in its
9 Motion, which mislead or otherwise distract from actual facts. Wells Fargo has completely misstated
10 the terms of the loan owed by the Debtor, as outlined above. Further, Wells Fargo states twice, "This
11 loan is contractually due for 01/01/2013". Debtor is not certain what this statement intends to
12 convey, but does know that pursuant to the Confirmation Order, the Approved Wells Fargo Claim is
13 payable over 30 years from 2011. Finally, Wells Fargo throws around the word "scheme", making
14 completely baseless allegations of mal intent.

15 In fact, the Debtor's intent is only for its creditors to honor the Court's Confirmation Order
16 and be held accountable for failing to do so thus far. It is true that once it became clear to the Debtor
17 and/or Melani Schulte that Approved Monthly Payments sent to Wells Fargo were not being properly
18 applied, the Debtor ceased making payments and incurred attorney fees. However, given the stay
19 afforded the Debtor in the present case, the Debtor is hopeful that Wells Fargo (and others) can be
20 held accountable for its actions, the Debtor can continue making the Approved Monthly Payment,
21 and any actual, justifiable arrearages, if any, can be resolved. In short, Debtor's intent is precisely
22 what the stay afforded the Debtor is designed for. Wells Fargo's claims for relief under 11 U.S.C.
23 §362(d)(4)(B) are unfounded and should be denied.

24
25 ² Due to William R. Schulte and Melani Schulte's divorce, and the transfer of properties into a
26 Holding Company per the Confirmed Plan, the Debtor filed this case rather than attempting to
seek relief in Melani Schulte's 2009 Bankruptcy that was confirmed years ago.

III. CONCLUSION

Make no mistake, Wells Fargo's Motion is about the numbers – Wells Fargo's **false** numbers. One has to wonder if it is more cost effective for Wells Fargo to persist in churning out mechanical responses and motions than for it to actually pause to comply with the Court's orders. Why Wells Fargo persists is unanswerable. Truly, if there is a party "scheming" here, it is not the Debtor. What the consequences should be for Wells Fargo's actions is better addressed by separate motion/action. However, it is clear that without having met a minimum requirement of accurate accounting, Wells Fargo has no right to proceed against the Debtor.

Wells Fargo's Motion should be denied just for failure to abide by Local Rule 4001(a)(2). However, Wells Fargo also completely fails in its arguments based upon §362(d)(1) or (d)(2), as the Splinter Rock property has equity estimated to be in excess of \$90,000. Wells Fargo even further fails to prove relief under §362(d)(4)(B) is justified, because Debtor's actions have been in accordance with Court order or in seeking others to be accountable to the Court's order. Had Wells Fargo and Debtor's other lenders properly complied with the Confirmation Order, years of exhaustive correspondence, litigation, and expense could have been avoided.

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1 The Code provides the Debtor a much needed stay against actions of creditors, such as Wells
2 Fargo, who would otherwise proceed against the Debtor in an unjust and unconscionable manner,
3 detrimental to the Debtor's estate. Wells Fargo has failed to provide cause for relief from this stay,
4 and has failed to comply with LR 4001(a)(2). The Debtor therefore respectfully requests the Court
5 deny Wells Fargo's Motion and grant the Debtor such other relief as it deems appropriate and just.

6 DATED: July 11, 2018.

7 JOHNSON & GUBLER, P.C.

8 /s/ Matthew L. Johnson

9 Matthew L. Johnson (6004)

10 Russell G. Gubler (10889)

11 Ashveen S. Dhillon (14189)

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18 Attorneys for Debtor

19 **CERTIFICATE OF SERVICE**

20 I hereby certify that I am an employee of Johnson & Gubler, PC, and that on July 11, 2018 I
21 caused to be served a true and correct copy of the **OPPOSITION TO MOTION FOR RELIEF**
22 **FROM THE AUTOMATIC STAY AND IN REM RELIEF** in the following manner:

23 ☒ **a. Electronic Service**

24 Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy
25 Court for the District of Nevada, the above-referenced document was electronically
26 filed on the date hereof and served through the Notice of Electronic Filing
automatically generated by that Court's facilities.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 11, 2018.

/s/ Suzanne Alexander

An Employee of Johnson & Gubler, P.C.